

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

No. 6:22-cv-00085

**Toby Williams,**  
*Petitioner,*

v.

**Director Bobby Lumpkin, TDCJ-CID,**  
*Respondent.*


**ORDER**

Petitioner Toby Williams, proceeding pro se, filed this civil action purportedly as a motion under Federal Rule of Civil Procedure 60(b), challenging a state court judgment of conviction for murder. The magistrate judge observed that Rule 60 is not applicable to state court judgments and construed the petition as seeking habeas corpus relief. After review of the pleadings, the magistrate judge issued a report recommending that the petition be dismissed as successive, noting that petitioner has previously sought habeas corpus relief and has not secured permission from the Fifth Circuit to file a successive petition, as required by 28 U.S.C. § 2244(b). Doc. 10. Petitioner filed objections stating simply “wherefore, petitioner objects,” without identifying any specific findings or recommendations or stating the basis for the objections. Doc. 13.

Having reviewed the magistrate judge’s report and the objections de novo, the court overrules the plaintiff’s objections and accepts the report’s findings and recommendations. The court orders that this petition for writ of habeas corpus is dismissed with prejudice as to its refiling without permission from the Fifth Circuit Court of Appeals, but without prejudice as to its refiling once such permission has been obtained. A certificate of appealability is denied sua sponte, with such denial referring solely to an appeal of the decision in this case and having no effect upon petitioner’s right to seek permission from the Fifth Circuit to file a

successive petition. To the extent petitioner seeks relief under Fed. R. Civ. P. 60(b), such relief is denied with prejudice.

*So ordered by the court on June 23, 2022.*

  
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J. CAMPBELL BARKER  
United States District Judge